

BEFORE THE  
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	<i>Direct Insurance Company</i>	)	
	Intangible Personal Property Account No. 107584	)	
	<i>Direct General Life Insurance Company</i>	)	
	Intangible Personal Property Account No. 137250	)	Davidson County
	Tax years 2006, 2007	)	

INITIAL DECISION AND ORDER

Statement of the Case

The Davidson County Assessor of Property ("Assessor") valued the subject property for tax purposes as follows:

<u>Account Number</u>	<u>Tax Year</u>	<u>Assessment</u>
107584	2006	\$2,785,000
	2007	\$2,760,280
137250	2006	\$ 126,200
	2007	\$ 215,600

On October 31, 2007, the taxpayers filed appeals with the State Board of Equalization ("State Board").

The undersigned administrative judge conducted a hearing of these appeals on January 16, 2008 in Nashville. The appellants, Direct Insurance Company ("Direct Insurance") and Direct General Life Insurance Company ("Direct General Life"), were represented by Anne-Marie Daniel Farmer and Stephen J. Jasper, of Bass, Berry & Sims, PLC (Nashville). Attorney Jenny L. Hayes, of the Metropolitan Department of Law, appeared on behalf of the Assessor.

Findings of Fact and Conclusions of Law

**Background.** Historically, the State Board has received very few appeals concerning assessments of intangible personal property pursuant to Tenn. Code Ann. sections 67-5-1101 *et seq.* or 67-5-1201 *et seq.* Like a "standard" valuation of tangible personal property, the value of self-reported intangible personal property is calculated on the basis of fairly straightforward statutory formulas. But Tenn. Code Ann. sections 67-5-901 *et seq.* contain specific deadlines by which an assessor must furnish, and the taxpayer must complete and return, a *tangible* personal property schedule. Those statutes also spell out the consequences of failure to file the required schedule in a timely manner, and permit the amendment of a duly-filed return until September 1 of the following tax year. Alas, as these appeals involving two affiliated insurance companies illustrate, the assessment of *intangible* personal property in this state is hampered by the lack of similar provisions in the applicable laws.

Direct Insurance and Direct General Life are two of seven insurance companies owned by a Nashville-based holding company known as Direct General Corporation ("Direct General"). The administrative offices of Direct General and its 23 subsidiaries are located at 1281



Murfreesboro Road in Music City. Not surprisingly, several thousand pieces of mail arrive there on a typical day.

Due apparently to the illness of one or more key employees of the Assessor's office, it did not furnish to the affected insurance companies the 2006 "assessment schedule" (Tax Schedule D) referred to in Tenn. Code Ann. section 67-5-1206 until well into 2007. Current appraisal services manager Dean Lewis, who became "intimately involved" in this function of the Assessor's office in late April, 2007, found it to be rather disorganized. He notified the companies by letter that a "forced" assessment would be made against any of them who failed to furnish the required information under oath by May 15, 2007.<sup>1</sup> In fact, Mr. Lewis did mail a notice of forced assessment against Direct Insurance for tax year 2006 in the amount of \$1,199,952 to the company on May 16, 2007.<sup>2</sup> Exhibit 6. Yet theretofore, according to the testimony of Direct General's director of tax compliance Nancy Britt, Direct Insurance and Direct General Life had not even received the tax forms to be completed from the Assessor's office.

In any event, Direct General tax compliance clerk Abby Lewellen (a subordinate of Ms. Britt) proceeded to file the required 2006 and 2007 schedules for both Direct Insurance and Direct General Life with the Assessor in June of 2007. Exhibit 7. Ironically, the inadvertent omission of some tax-exempt properties from the schedules resulted in considerably *higher* assessments of Direct Insurance than the original forced assessment against the company for tax year 2006.<sup>3</sup> Mr. Lewis personally mailed notices of those assessments<sup>4</sup>, as well as of much lower assessments against the newer Direct General Life<sup>5</sup>, on June 25, 2007 (for tax year 2006) and July 30, 2007 (for tax year 2007) to the address shown on the schedules: i.e., 1281 Murfreesboro Road, Nashville, TN 37217.<sup>6</sup> Each notice included a statement of the taxpayer's right to appeal the assessment to the State Board within 45 days of the date of mailing.<sup>7</sup> Exhibit 3.

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<sup>1</sup>Tenn. Code Ann. sections 67-5-1201 *et seq.* do not expressly provide for a forced assessment of unreported intangible personal property. *Compare* Tenn. Code Ann. section 67-5-903(c). Curiously, imprinted in quotation marks on the Tax Schedule D forms were statements as to the supposed legal consequences and penalties for failure, neglect, or refusal to file the return, or falsification thereof. To the best of the administrative judge's knowledge, no such laws were actually in effect.

<sup>2</sup>This notice advised the taxpayer that "[i]f you disagree with this assessment you may appeal to the State Board of Equalization within forty-five days" from the date of mailing.

<sup>3</sup>See Tenn. Code Ann. section 67-5-1203(b)(1)(A).

<sup>4</sup>Presumably because of the earlier (forced) assessment against Direct Insurance, the notice of its assessment for tax year 2006 was marked "(Revised)".

<sup>5</sup>Direct General Life was qualified to do insurance business on January 30, 2004. Direct Insurance, on the other hand, was authorized to do business in April, 1991. See Tenn. Code Ann. section 67-5-1204.

<sup>6</sup>This was also the address to which the Assessor's office had been instructed to mail notices of property assessments concerning Direct Insurance in a February, 2003 letter from an employee of the company (Larry Jernigan).

<sup>7</sup>By the time the notices of assessment were mailed, the Metropolitan Board of Equalization had adjourned its regular sessions for the tax years in question. See Tenn. Code Ann. section 67-5-1412(e).



The appellants maintained that they never received these assessment notices. Further, Ms. Britt related, Direct General had experienced problems with receipt of Davidson County property tax-related correspondence in the past. For example, in July of 2005, the company received from the Metropolitan Trustee's office a notice of delinquent 2004 taxes owed by Direct Insurance and Direct General Insurance Agency, Inc. (another Direct General subsidiary). Ms. Britt informed Bob Fitzpatrick of the Trustee's office by telephone that the original 2004 tax notices for the delinquent accounts had not been received. In an attempt to prevent similar problems in the future, Ms. Britt sent Mr. Fitzpatrick a letter via certified mail. A copy of that letter, which was admitted as Exhibit 2 at the hearing, is attached to this initial order.

The Trustee's office did not advise Ms. Britt to contact anyone else regarding the "correct" mailing address indicated in her letter. Ms. Lewellen, for her part, was sure that she would never have neglected to deal with notices of forced or increased assessments of this magnitude in a timely manner.

Direct General *did* receive "personalty tax statements" for the amounts of these assessments of the subject property in late September or early October, 2007. Exhibit 4. Oddly, the smallest of those tax bills – the 2006 one for the account in the name of Direct General Life (\$5,918.78) – had already been sent on July 27, 2007 and paid on August 30, 2007. (Apparently, Ms. Lewellen had assumed that it pertained to the tangible personal property in the office of the company.) Especially alarmed by the increased assessments on the Direct Insurance account, Ms. Britt and Ms. Lewellen arranged a conference call with Mr. Lewis in late October, 2007. He explained that the assessments were derived from the taxpayers' own entries on the schedules, and that the existing law did not authorize amendments of the returns. At Mr. Lewis' suggestion, Direct Insurance and Direct General Life submitted these appeals to the State Board. Exhibit 5.

**Applicable Law.** Tenn. Code Ann. section 67-5-1412(e) provides that:

Appeals to the state board of equalization from action of a local board of equalization must be filed on or before August 1 of the tax year, or within forty-five (45) days of the date notice of the local board action was sent, whichever is later. If notice of an assessment or classification change pursuant to section 67-5-508 was sent to the taxpayer's **last known address** later than ten (10) days before the adjournment of the local board of equalization, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the notice was sent. If notice was not sent, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the tax billing date for the assessment. The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the time for appeal to the state board began to run. [Emphasis added.]



**Contentions of the Parties.** The values reported by Direct Insurance and Direct General Life on their “revised” Schedule Ds are not disputed.<sup>8</sup> Nevertheless, counsel for the Assessor contends that these appeals must be dismissed because they were filed more than 45 days after the notices of the disputed assessments were sent to the taxpayers. In Direct General’s view, the Assessor’s failure to address those documents to the attention of Nancy Britt (in accordance with her attached letter to the Metropolitan Trustee’s office) amounted to a lack of sufficient notice. Alternatively, citing Bartlett Mortgage Inc. (Shelby County, Tax Year 2004, Initial Decision and Order, March 10, 2006), the company argues that there was “reasonable cause” within the meaning of Tenn. Code Ann. section 67-5-1412(e) for the lateness of these appeals.

**Analysis.** The taxpayers’ attorneys stressed the magnitude of the disparity between the original assessments of the subject property and the “correct” ones derived from the revised schedules. However, the total amount of personalty taxes at stake is plainly immaterial both as to whether the assessment notices were sent to the taxpayers’ “last known address” and, if so, whether these appeals should be accepted under the “reasonable cause” exception. This is especially true considering that the assessments under appeal resulted from the taxpayers’ own reporting mistakes.

In the opinion of the administrative judge, notice of an assessment pursuant to Tenn. Code Ann. sections 67-5-1201 *et seq.* cannot be deemed defective merely because the “address” to which it was sent did not include the name of a particular employee of the insurance company – at least where, as here, the company never requested the Assessor’s office to direct any such notice to the attention of that individual. While assessors may be chargeable with knowledge of mailing addresses indicated on recorded deeds<sup>9</sup>, they are not accountable for every piece of property tax-related correspondence mailed to another county official – even one located in the same building.

The question remains whether there was “reasonable cause” for the taxpayers’ failure to file these direct appeals within 45 days from the date the notices of assessment were sent. Generally, the Assessment Appeals Commission (appointed by the State Board under authority of Tenn. Code Ann. section 67-5-1502) has construed the reasonable cause statute to require a showing of some circumstance beyond the aggrieved taxpayer’s control (e.g., disability or illness). See, e.g., Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992,

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<sup>8</sup>The “correct” values propounded by the appellants are as follows:

<u>Account Number</u>	<u>Tax Year</u>	<u>Assessment</u>
107584	2006	\$447,275
	2007	\$ 57,270
137250	2006	\$ 29,305
	2007	\$ 68,085

<sup>9</sup>See Summer Trace Apartments (Shelby County, Tax Years 1995-1996, Final Decision and Order, January 22, 1999).



Final Decision and Order, August 11, 1994); John Orovets (Cheatham County, Tax Year 1991, Final Decision and Order, December 3, 1993).

In Michael & Stephanie Davis (Davidson County, Tax Year 1993, Final Decision and Order, November 13, 1995), the Assessment Appeals Commission held that:

...[T]here was testimony only that the (assessment change) notice was not received, and we find no basis **in this fact alone** to demonstrate reasonable cause for failure to appeal to the county board of equalization. [Emphasis added.]

*Id.* at p. 1.

But later, “upon observing (another appellant’s) demeanor and evaluating the history of mail delivery in her neighborhood,” the Commission found the purported non-receipt of a correctly-addressed assessment change notice to be reasonable cause for a direct appeal to the State Board. Mary M. Headrick and Detlef R. Matt (Knox County, Tax Year 1993, Order Recognizing Jurisdiction and Remanding the Appeal for a Hearing, November 5, 1996), p. 2. It was on the Headrick case that Administrative Judge Mark Minsky mainly relied in allowing a direct appeal filed *more than* 45 days after the tax billing date in Bartlett Mortgage, *supra*. Except for the complaint concerning the 2006 assessment of Direct General Life, the instant appeals were perfected *within* that time period.

To be sure, nothing in the record of this proceeding suggests the existence of a mail delivery problem in the taxpayers’ *neighborhood*. Rather, it appears that any such difficulty was confined to Direct General’s office building.

Yet, even assuming that the notices of assessment mailed by Mr. Lewis were properly delivered to that location and misrouted by the company’s own personnel, the administrative judge respectfully recommends acceptance of both appeals by Direct Insurance and the appeal for tax year 2007 by Direct General Life. Had Ms. Britt requested in the attached letter only that the Metropolitan Trustee’s office direct all future tax bills for the subject accounts to her personal attention, the administrative judge would be less inclined to this conclusion. Significantly, however, she also asked Mr. Fitzpatrick to “let me know whom I need to contact to get this information changed.” Having received no response to her letter, Ms. Britt could reasonably have believed that no further action on her part was necessary – or at least that he would inform the Assessor’s office of the requested change. Indeed, Mr. Lewis testified that the Trustee’s office “typically” does convey change-of-address information to his office.

Since the 2006 personalty tax bill paid on August 30, 2007 clearly identified the property owner (Direct General Life), account number (137250), and assessed value (\$126,200), the administrative judge does not find reasonable cause for the ensuing two-month delay in initiating an appeal of that assessment. Accordingly, the State Board does not have the authority to change it. See Tenn. Atty. Gen. Op. 92-62 (October 8, 1992).

#### Order

It is, therefore, ORDERED that the taxpayer’s appeal with respect to the assessment on Intangible Personal Property Account Number 137250 for tax year 2006 be dismissed for lack of



jurisdiction. It is further ORDERED that the remainder of the property in question be revalued as follows:

<u>Account Number</u>	<u>Tax Year</u>	<u>Assessment</u>
107584	2006	\$447,275
	2007	\$ 57,270
137250	2007	\$ 68,085

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 7<sup>th</sup> day of March, 2008.



PETE LOESCH  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

cc: Anne-Marie Daniel Farmer and Stephen J. Jasper, Bass, Berry & Sims, PLC  
Assistant Metropolitan Attorney Jenny L. Hayes  
Kenneth Vinson, Davidson County Assessor's Office



ATTACHMENT TO INITIAL DECISION AND ORDER



*Direct General Corporation*  
1281 Murfreesboro Pike  
Nashville, TN 37217

July 14, 2005

Mr. Bob Fitzpatrick  
Metropolitan Trustee Office  
800 Second Avenue North, Suite 2  
Nashville, TN 37201-5007

RE: Direct General Insurance Agency and Direct Insurance Company  
2004 Delinquent Tax Notices

Dear Mr. Fitzpatrick,

Thank you so much for taking my call this morning and discussing these late filings and payments. I have enclosed checks for the delinquent notices we have received. As agreed per our phone conversation, we have calculated the interest at 3%. Included in this package is the detail listing of the individual notices.

There are two issues I need additional assistance with, but don't know how to get them resolved. If you could help me with these or let me know whom I need to contact to get this information changed, I would appreciate it. The two issues are:

1. The correct mailing address for all the enclosed accounts numbers should be:  
Attn: Nancy Britt (5-75)  
1281 Murfreesboro Pike  
Nashville, TN 37217
2. The correct name for RT/BK 000095846 should be "Direct Administration, Inc." instead of Direct Ins Co.

If you have any questions, please feel free to call or send e-mail. Again, thank you for your assistance in this very important matter.

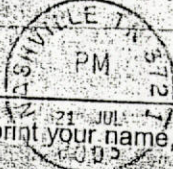
Sincerely,

A handwritten signature in cursive script that reads "Nancy Britt".

Nancy Britt  
Director of Tax Compliance  
(615) 366-3757  
[Nancy.Britt@directgeneral.com](mailto:Nancy.Britt@directgeneral.com)



UNITED STATES POSTAL SERVICE



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Direct General Corp.  
Attn: Nancy Britt (5-75)  
1281 Murfreesboro Road  
Nashville, TN 37217

7217+2422



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Bob Fitzpatrick  
Metro Trustee Office  
800 Second Ave, No, Suite 2  
Nashville, TN 37201-5007

2. Article Number  
(Transfer from service label)

PS Form 3811, March 2001

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

X

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type

- ☒ Certified Mail ☐ Express Mail
- ☐ Registered ☐ Return Receipt for Merchandise
- ☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

Domestic Return Receipt

102595-01-M-142